

## **2005 DRAFTING REQUEST**

### **Assembly Substitute Amendment (ASA-SB145)**

Received: **01/24/2006**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Dean Kaufert (608) 266-5719**

By/Representing: **Chris (Harsdorf)**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**  
**Criminal Law - procedure**  
**Criminal Law - district attys**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kaufert@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us**  
**cathlene.hanaman@legis.state.wi.us**  
**christian.schneider@legis.state.wi.us**

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#### **Pre Topic:**

No specific pre topic given

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#### **Topic:**

Deferred or suspended prosecution agreements in worthless check cases

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#### **Instructions:**

See Attached

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#### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	mdsida 03/02/2006	kfollett 03/02/2006		_____			
/1			rschluet 03/03/2006	_____	sbasford 03/03/2006	sbasford 03/03/2006	

FE Sent For:

**<END>**

*Assembly*  
*LA*  
**2005 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB145)**

Received: **01/24/2006**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Sheila Harsdorf (608) 266-7745**

By/Representing: **Chris**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous  
Criminal Law - procedure  
Criminal Law - district attys**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Harsdorf@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us  
cathlene.hanaman@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Deferred or suspended prosecution agreements in worthless check cases

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**Instructions:**

See Attached

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**Drafting History:**

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/?	mdsida	1/15/06 3/2	Completed doc Ch 1-25				

FE Sent For:

336  
<END>

1     **AN ACT** in relation to criminal law.

2     Be it enacted by the State of Wisconsin.

3             **Section 1.** 943.245 (3m) of the statutes is amended to read as follows:

4             943.245 (3m) District Attorney, and/or local law enforcement Deferred  
Prosecution Program for business and individuals:

5             Worthless checks (1) in this section;

6             (a) In this Section

7                 "Offender" means a person charged with, or for whom probable cause  
8                 exists to charge the person with, worthless check(s). Define by §  
9                 Deferred prosecution program; worthless checks means the decision of a  
10                prosecutor to refer an offender to a (Deferred Prosecution) program on  
11                condition that the criminal charges against the offender will be dismissed  
12                after a specified period of time, or the case will not be charged, if the  
13                offender successfully completes the program.

14               "Restitution" means all amounts payable to a victim of worthless  
15                checks being defined as NSF, Account Closed, Refer to Maker, Stop  
16                Payment and including Electronic Check Payment and Electronic Funds  
17                Transfer from checking account under the (Deferred Prosecution  
18                Program) created under this Section, including the amount of the check  
19                and any transaction fees payable to a victim as set forth in subsection (g)  
20                but does not include amounts recoverable under Section XXX of the  
21                Uniform Commercial Code and Section XXX of this Code.

22               Victims (Business or individuals) referring to the Deferred Prosecution  
23               Program may not pursue or partake any civil action or penalties.

1           (b) A District Attorney may create within his or her office a worthless  
2           check deferred prosecution program for Victims who agree to voluntarily  
3           participate in the program instead of undergoing prosecution. The program  
4           may be conducted by the District Attorney or by a Private entity under  
5           contract with the District Attorney. If the District Attorney contracts with a  
6           private entity to perform any services in operating the  
7           program, the private entity shall operate under the supervision,  
8           direction, and control of the District Attorney. Any Private entity providing  
9           services under this Section is not a "collection agency" as that term is  
10           defined under the Collection Agency Act.

11           (c) If an offender is referred to the District Attorney, the District Attorney may  
12           determine guidelines as to whether the offender is appropriate for  
13           acceptance into the program. The District Attorney may consider, but  
14           shall not be limited to consideration of the following factors:

- 15                   (1) the amount of the check that was drawn or passed;  
16                   (2) prior referrals of the offender to the program;  
17                   (3) whether other charges of worthless check(s) are pending against  
18                   the offender ;  
19                   (4) the evidence presented to the District Attorney regarding the facts  
20                   and circumstances of the incident;  
21                   (5) the offender's criminal history; and  
22                   (6) the reason the check was dishonored by the financial institution.

23           (d) The worthless check diversion program may require an offender to do  
24           one or more of the following

1                   (1) pay for, at his or her own expense, and successfully complete an  
2                   educational class held by the District Attorney or a Private entity  
3                   under contract with the District Attorney. These educational class  
4                   fees shall be no less than \$85 and the District Attorney shall  
5                   determine the guidelines on who shall be required to attend.  
6                   (2) make full restitution for the offense.  
7                   (3) pay a per-check administrative fee as set forth in this Section.  
8                   (4) pay any and all fees the victim has been assessed by the financial  
9                   institution for attempting to process a worthless check.  
10                  (e) If an offender is diverted to the program, the District Attorney shall agree  
11                  not to prosecute the offender upon the offender's successful  
12                  completion of the program conditions. The District Attorney agreement  
13                  to defer the offender shall specify the offenses that will not be prosecuted  
14                  by identifying the checks involved in the transactions.  
15                  (f) Release of account information to law enforcement authorities, DA  
16                  And private entity under contract with DA Office for the sole purpose of  
17                  Running the Deferred Prosecution Program  
18                  Information developed in the Deferred Prosecution Program is protected  
19                  Under the WI data privacy act and may not be shared with any non-law  
20                  Enforcement entities  
21                  (financial institution) shall release the information specified below to any  
22                  stat/e, county, or local law enforcement or prosecuting authority which  
23                  certifies in writing that it is investigating or prosecuting a complaint  
24                  against the drawer under this section worthless check(s) Where 20 days  
25                  have elapsed since the mailing of the notice of worthless check. This sub-  
26                  division applies to the following information relating to the drawer's  
27                  account:

28                   (1) Documents relating to the opening of the account by the drawer

29                   and the closing of the account;

1                   (2) Notices regarding non-sufficient funds, overdrafts, and the

2                   dishonor of any check drawn on the account within a period of

3                   six months of the date of request.

4                   (3) Periodic statements mailed to the drawer by the drawee (financial

5                   institution) for the periods immediately prior to, during, and

6                   subsequent to the issuance of any check which is the subject of

7                   the investigation or prosecution; or

8                   (4) The last known home and business addresses and telephone

9                   numbers of the drawer.

10                  The drawee (financial institution) shall release all of the information

11                  described in clauses (1) to (4) that it possesses within ten days

12                  after Receipt of a request conforming to all of the provisions of this

13                  subdivision. The drawee (financial institution) may not impose a

14                  fee for furnishing this information to law enforcement or

15                  prosecuting Authorities.

16                  A drawee (financial institution) is not liable in a criminal or civil

17                  proceeding for releasing information in accordance with this

18                  subdivision.

19                  (g) The District Attorney or Private entity under contract with the District

20                  Attorney, may recover a fee from an offender deferred to the District

21                  Attorney's deferred prosecution program: worthless checks. The District

22                  Attorney may require that the fee be paid directly to the District Attorney's

23 office or to the private entity that administers the program  
24 under a contract with the District Attorney. The amount of the  
1 administrative fees recovered by the District Attorney under this program  
2 may not exceed \$35 per check, assessed educational class fees and  
3 victim financial transaction fees, and service fees. The county board may, however,  
by  
4 ordinance, increase the fees Allowed by this Section if the increase is  
5 justified by an acceptable cost study Showing that the fees allowed by this  
6 Section are not sufficient to cover the cost of providing the  
7 service.

8 (h) The District Attorney or private entity under contract with the District  
9 Attorney may determine under contract guidelines on when fees maybe  
10 waived for offender due to economic situations or to arrange an  
11 extended payment plan not to exceed six months from the written date on  
12 the face of the check or first date of first contact.

13 (i) The private entity contracted with the District Attorney deferred  
14 program shall be required to maintain adequate insurance,  
15 financial accounting controls, and fund disbursement procedures as  
16 determined by the District Attorney's office.

17 (j) The District Attorney may cancel a contract entered into with a  
18 private entity under this Section for any one or any combination of the  
19 following causes:

20 (1) Conviction of the private entity or the principals of the private entity  
21 of any crime under the laws of any U.S. jurisdiction which is a  
22 felony, a misdemeanor an essential element of which is



23 dishonesty, or of any crime which directly relates to the practice of  
24 the profession.

25 (2) A determination that the private entity has engaged in conduct  
1 prohibited in item (4).

2 (k) The District Attorney may determine whether the private entity has  
3 engaged in the following prohibited conduct:

4 (1) Using or threatening to use force or violence to cause physical  
5 harm to his or her family, or his or her property.

6 (2) Threatening the seizure, attachment, or sale of an offender's  
7 property where such action can only be taken pursuant to court  
8 order without disclosing that prior court proceedings are required.

9 (3) Disclosing or threatening to disclose information adversely  
10 affecting an offender's reputation for creditworthiness with  
11 knowledge the information is false.

12 (4) Initiating or threatening to initiate communication with an offender's  
13 employer unless there has been a default of the payment of the  
14 obligation for at least 30 days and at least 5 days prior written  
15 notice, to the last known address of the offender, of the intention to  
16 communicate with the employer has been given to the employee,  
17 except as expressly permitted by law or court order.

18 (l) Communicating with the offender or any member of the offender's  
19 family at such a time of day or night and with such frequency as to  
20 constitute harassment of the offender or any member of the offender's  
21 family. For purposes of this clause (E) the following conduct shall

22                   constitute harassment.

23                   (1) Communicating with the offender or any member of his or her

1                   family at any unusual time or place or a time or place known or

2                   which should be known to be inconvenient to the offender. In

3                   the absence of knowledge of circumstances to the contrary,

4                   a private entity shall assume that the convenient time for

5                   communicating with a consumer is after 8 o'clock a.m. and

6                   before 9 o'clock p.m. local time at the offender's residence.

7                   (2) The threat of publication or publication of a list of offenders who

8                   allegedly refuse to pay restitution, except by the District Attorney.

9                   (3) The threat of advertisement or advertisement for sale of any

10                  restitution to coerce payment of the restitution.

11                  (4) Causing a telephone to ring or engaging any person in telephone

12                  conversation repeatedly or continuously with intent to annoy,

13                  abuse, or harass any person at the called number.

14                  (5) Using profane, obscene or abusive language in communicating

15                  with an offender, his or her family, or others.

16                  (6) Disclosing or threatening to disclose information relating to an

17                  offender's case to any other person except the victim and

18                  appropriate law enforcement personnel.

19                  (7) Disclosing or threatening to disclose information concerning

20                  the alleged criminal act which the private entity knows to be

21                  reasonably disputed by the offender without disclosing the fact

22                  that the offender disputes the accusation.

- 23                   (8) Engaging in any conduct which the District Attorney finds  
24                   was intended to cause and did cause mental or physical illness  
1                   to the offender or his or her family.
- 2                   (9) Attempting or threatening to enforce a right or remedy with  
3                   knowledge or reason to know that the right or remedy does not  
4                   exist.
- 5                   (10) Except as authorized by the District Attorney, using any form  
6                   of communication which simulates legal or judicial process or  
7                   which gives the appearance of being authorized, issued, or  
8                   approved by a governmental agency or official or by an attorney at  
9                   law when it is not.
- 10                  (11) Using any badge, uniform, or other indicia of any governmental  
11                  agency or official, except as authorized by law or by the District  
12                  Attorney.
- 13                  (12) Except as authorized by the District Attorney, conducting  
14                  business under any name (District Attorney's and/or local law  
15                  enforcement) or in any manner which suggests or in any manner  
16                  which suggests or implies that the private entity is bonded if such  
17                  private entity is or is a branch of or is affiliated with any  
18                  governmental agency or court if such private entity is not.
- 19                  (13) Misrepresenting the amount of the restitution alleged to be owed.
- 20                  (14) Except as authorized by the District Attorney, representing  
21                  that an existing restitution amount may be increased by the  
22                  addition of Attorney fees, investigation fees, or any other fees

23                   or charges when those fees or charges may not legally be  
24                   added to the existing restitution.

25                   (15) Except as authorized by the District Attorney, representing  
1                   that the private entity is an attorney at law or an agent for an  
1                   attorney if the entity is not.

2                   (16) Recovering or attempting to recover any interest or other  
3                   charge or fee in excess of the actual restitution or claim unless  
4                   the interest or other charge or fee is expressly authorized by  
5                   the District Attorney, who shall determine what constitutes a  
6                   reasonable collection fee.

7                   (17) Communicating or threatening to communicate with an  
8                   offender when the private entity is informed in writing by an  
9                   attorney that the attorney represents the offender concerning  
10                   the claim, unless authorized by the attorney. If the attorney  
11                   fails to respond within a reasonable period of time, the private  
12                   entity may communicate with the offender. The private entity  
13                   may communicate with the offender when the attorney gives  
14                   his consent and including the use of the District Attorney's logo,  
15                   on correspondence and letters.

16                   (18) Engaging in dishonorable, unethical, or unprofessional conduct  
17                   of a character likely to deceive, defraud, or harm the public.

18                   (m) The District Attorney shall audit the accounts of the bad check diversion  
19                   program after notice in writing to the private entity.

20                   (n) Any information obtained by a private entity that has a contract with the

21 District Attorney to conduct a bad check diversion program is confidential  
22 information between the District Attorney and the private entity and may  
23 not be sold or used for any other purpose but may be shared with other  
1 authorized law enforcement agencies as determined by the District  
2 Attorney.

Effective date. This Act takes effect upon becoming law. . .

RPA Draft 02/27/04

**Dsida, Michael**

---

**From:** Schneider, Christian  
**Sent:** Monday, January 23, 2006 11:17 AM  
**To:** Dsida, Michael  
**Subject:** SB 145  
**Attachments:** Wisconsin Deferred Bad Check Program[2].doc

Mike,

As currently drafted, SB 145 allows DAs to contract with nonprofit collection agencies to help them collect on bad checks. When the bill was originally drafted, we had one specific nonprofit company in mind to administer the program - it's a company in Minnesota that has been doing it there for a few years. The company keeps a database of offenders, teaches financial counseling classes, and does other things we wanted the deferred prosecution agreements to cover.

We were trying to find a way that we could open up the bill to both nonprofit and for-profit collection agencies. If we do so, we wanted the law to require some of the things the nonprofit company said they would do but aren't enumerated in the bill (MN law doesn't require the company to be nonprofit, it just so happens that this company is so good, they have gotten most of the business in their state).

Attached is a sample bill draft they put together that they believe shows what will have to be required by law if for profit companies are allowed to compete for these contracts. Can you take a look at it and see if any of these new requirements make any sense?

Thanks,

Chris

---

**From:** Scott Adkisson [mailto:scott@financialcrimes.net]  
**Sent:** Friday, January 06, 2006 10:23 AM  
**To:** Schneider, Christian  
**Subject:** RPA bill

Chris,  
Attached is the bill we developed at the beginning. I have highlighted areas that we can discuss.

Respectfully,  
Scott Adkisson

03/02/2006

## Dsida, Michael

---

**From:** Schneider, Christian  
**Sent:** Thursday, February 09, 2006 1:00 PM  
**To:** Dsida, Michael  
**Subject:** RE: Sub to SB145 (worthless checks)

1. Do we even want to specify what the fee should be? Wouldn't this be covered by a DA's contract with the collection agency? I think we'd like to remain somewhat vague on what the class covers, to keep flexibility, unless there's an existing statutory definition of "financial counseling" or something we can point to.
2. I don't know.
3. I imagine this is the date that the accused is first contacted by the DA to inform them of the accusation against them and/or given the option to partake in the program.
4. I'm pretty sure that this allows a DA to cancel a contract with a collection agency if that agency is found guilty of any crime that relates to the possession of collecting past due amounts.
5. This stuff looks like consumer protection, but if there are already prohibited collection practices in statute, you may just want to point to them and say a DA can cancel a contract for a violation.

---

**From:** Dsida, Michael  
**Sent:** Thursday, February 09, 2006 12:37 PM  
**To:** Schneider, Christian  
**Subject:** Sub to SB145 (worthless checks)

I realize that you may not have the answers to these questions yourself, but...

1. Should the bill specify what the \$85 class (page 3, line 1) covers? Note that the bill requires that the class or counseling cover financial management. Also, if you want the class to address the impact of worthless checks (as in the bill at page 2, line 18), should the sub specify what kind of impact is to be addressed? For example, is it the impact on financial institutions? The business community? The public generally? (The bill does not address that; perhaps it should have.)
2. What are "service fees" (page 5, line 3)?
3. What is the "first date of first contact" (page 5, line 12)?
4. Which profession is being referred to near the top of page 6?
5. It is unclear why the language proposed for the sub contains the material at page 6, lines 2-11 and at page 6, line 18 to page 9, line 17. There are no consequences spelled out for an agency that engages in prohibited conduct or harassment.

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
michael.dsida@legis.state.wi.us

## Dsida, Michael

---

**From:** Schneider, Christian  
**Sent:** Wednesday, February 22, 2006 3:06 PM  
**To:** Dsida, Michael  
**Subject:** RE: Other questions/issues re worthless check sub

I'm generally not a fan of putting dollar amounts into the statutes - the program would still run without us specifying this, right? Wouldn't the contract with the DA specify the fees? Wouldn't we want to provide flexibility?

---

**From:** Dsida, Michael  
**Sent:** Wednesday, February 22, 2006 3:03 PM  
**To:** Schneider, Christian  
**Subject:** RE: Other questions/issues re worthless check sub

I know that you worked on getting me an answer to the question about the section numbers, but did you get anywhere on the question in the last paragraph below?

---

**From:** Dsida, Michael  
**Sent:** Tuesday, February 14, 2006 1:56 PM  
**To:** Schneider, Christian  
**Subject:** Other questions/issues re worthless check sub

The bill relates only to violations of s. 943.24, which requires proof that the person intended that a check not be paid. But the definition of "restitution" in the language you sent me appears to cover things like NSF checks, which are not necessarily subject to that section. As a result, I will delete the language beginning with "being defined as NSF" on page 1, line 15 through "from checking account" on line 17.

I don't know what section numbers are to replace the XXXs on page 1. Can the people that you are working with on this provide some more information on this?

I changed the provision authorizing extended payment plans to eliminate the reference to the "first date of first contact." Now the provision just specifies that the payment plan has to be completed within six months.

If you don't want to specify the maximum fee for the class or counseling, do you want to take the same approach with the \$35 fee for the administrative costs of the program? (See page 5, line 2.)



## Dsida, Michael

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**From:** Schneider, Christian  
**Sent:** Wednesday, February 22, 2006 3:28 PM  
**To:** Dsida, Michael  
**Subject:** RE: Another question re worthless check sub

I would think the program would still apply to someone making a partial payment (I think these collectors often figure out payment plans for the offenders), but not if no payment is made. Does that make sense?

---

**From:** Dsida, Michael  
**Sent:** Wednesday, February 22, 2006 3:22 PM  
**To:** Schneider, Christian  
**Subject:** Another question re worthless check sub

The proposed language indicates that a person may not bring a civil action for damages against an offender if he or she has referred the case to a deferred prosecution program. I assume that you do not want that restriction to apply if the offender does not participate in the program. Also, what happens if the offender makes partial payment (or no payment at all) to the victim?

## Dsida, Michael

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**From:** Schneider, Christian  
**Sent:** Wednesday, February 22, 2006 3:40 PM  
**To:** Dsida, Michael  
**Subject:** RE: RPA bill

I don't know why we would want to include that portion. By doing so, we would be prohibiting the definition of "restitution" from including victims' out of pocket expenses (1b) or other costs not covered by the face value of the check (2b), right? Is there any reason we would want to do this? Again, less statutory language means more flexibility for the DAs to figure it out. Unless you can think of a reason that we would want to exclude these two categories from being covered under the program.

---

**From:** Dsida, Michael  
**Sent:** Wednesday, February 22, 2006 3:12 PM  
**To:** Schneider, Christian  
**Subject:** FW: RPA bill

The citation to the provision in s. 943.245 is incomplete. Is it s. 943.245 (1) (b)? Or is it s. 943.245 (2) (b)?

---

**From:**  
**Sent:** Friday, February 17, 2006 2:41 PM  
**To:** Dsida, Michael  
**Subject:** FW: RPA bill

---

**From:** Scott Adkisson [mailto:scott@financialcrimes.net]  
**Sent:** Friday, February 17, 2006 2:24 PM  
**To:** Schneider, Christian  
**Subject:** RE: RPA bill

Chris,

Here it is with the statutes. Let me know if you need anything else.

Scott

---

**From:** Schneider, Christian [mailto:Christian.Schneider@legis.state.wi.us]

**Sent:** Friday, February 17, 2006 11:21 AM  
**To:** scott@financialcrimes.net  
**Subject:** RE: RPA bill

Yes - please do so. We need a fairly quick answer so we can get moving on our amendment.

-Chris

---

**From:** Scott Adkisson [mailto:scott@financialcrimes.net]  
**Sent:** Thursday, February 16, 2006 10:41 AM  
**To:** Schneider, Christian  
**Subject:** RE: RPA bill

Chris,

When we assembled the document we left the section open with an X because we did not know how to word it for WI. If you would like I can review WI law and find out if it is even applicable. Let me know.

Respectfully,

Scott Adkisson

---

**From:** Schneider, Christian [mailto:Christian.Schneider@legis.state.wi.us]  
**Sent:** Tuesday, February 14, 2006 3:49 PM  
**To:** Scott Adkisson  
**Subject:** FW: RPA bill

Scott,

On page 1 of this document, you have "Section XXX" a couple times. Any idea what section numbers those would refer to?

Here's the note I got from the drafter:

I don't know what section numbers are to replace the XXXs on page 1. Can the people that you are working with on this provide some more information on this?

---

**From:** Scott Adkisson [mailto:scott@financialcrimes.net]  
**Sent:** Friday, January 06, 2006 10:23 AM  
**To:** Schneider, Christian  
**Subject:** RPA bill

Chris,

Attached is the bill we developed at the beginning. I have highlighted areas that we can discuss.

Respectfully,

Scott Adkisson

## Dsida, Michael

---

**From:** Schneider, Christian  
**Sent:** Thursday, February 23, 2006 3:24 PM  
**To:** Dsida, Michael  
**Subject:** FW: More...

Help?

---

**From:** Scott Adkisson [mailto:scott@financialcrimes.net]  
**Sent:** Thursday, February 23, 2006 3:10 PM  
**To:** Schneider, Christian  
**Subject:** RE: More...

Christian,

See answers below. If you need more clarification let me know. I did change the butcher job on page 8 line 13.

Scott

---

**From:** Schneider, Christian [mailto:Christian.Schneider@legis.state.wi.us]  
**Sent:** Thursday, February 23, 2006 10:16 AM  
**To:** scott@financialcrimes.net  
**Subject:** FW: More...

More questions...

---

**From:** Dsida, Michael  
**Sent:** Wednesday, February 22, 2006 5:00 PM  
**To:** Schneider, Christian  
**Subject:** More...

1. On page 6, line 17 of the first version that you sent me: what situations are intended to be covered by the "except as expressly permitted..." clause?

As permitted by the "Fair debt Credit Reporting Act" which allows you to call an employer unless told by debtor not to.

2. Page 7, line 9: What does the "sale of any restitution" mean?

Stops the sale of negative data to any reporting entities such as large check companies, credit bureaus, Lexus/Nexus, etc.

3. Page 8, line 13: There seem to be two separate issues here: deception regarding bonding and deception regarding the entity's affiliation with a govt agency. Is that how you read it?

Rewritten:

9 (12) Except as authorized by the District Attorney, conducting

10 business under any other name or implied name is prohibited.  
(District Attorney's and/or local law

-

11 enforcement) or to imply

**Dsida, Michael**

---

**From:** Dsida, Michael  
**Sent:** Tuesday, February 28, 2006 2:51 PM  
**To:** Schneider, Christian  
**Subject:** Preemption

Chris-

After consulting with Mark Kunkel in our office (he drafts bills relating to financial services), I learned that private entities covered by the sub may also subject to the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o. *See Liles v. American Corrective Counseling Servs.*, 131 F. Supp. 2d 1114 (D. Iowa 2001). I have not examined the FDCPA closely, but Mark has informed me that at least one provision of the sub -- the one relating to when the private entity can contact a person represented by an attorney -- would be preempted by the FDCPA. I assume that you do not want me to spend time examining federal law to see if there are other problems, but at the very least I wanted to let you know about this issue.

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**From:** Dsida, Michael  
**Sent:** Tuesday, February 28, 2006 10:43 AM  
**To:** Schneider, Christian  
**Subject:** RE: More...

*If it's okay with you, we will rewrite this provision so that it more clearly covers the sale of "negative data."*

2. Page 7, line 9: What does the "sale of any restitution" mean?

Stops the sale of negative data to any reporting entities such as large check companies, credit bureaus, Lexus/Nexus, etc.

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
michael.dsida@legis.state.wi.us

## Dsida, Michael

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**From:** Schneider, Christian  
**Sent:** Wednesday, March 01, 2006 4:56 PM  
**To:** Dsida, Michael  
**Subject:** RE: Deferred pros sub

Just scrap that part.

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**From:** Dsida, Michael  
**Sent:** Wednesday, March 01, 2006 4:23 PM  
**To:** Schneider, Christian  
**Subject:** Deferred pros sub

I think I'm getting close to the end, but here's another question. What does the 20 day reference (page 3, line 24) mean? It seems to suggest that a DA or law enforcement agency can't request the info until at least 20 days have passed. Is that how you interpret it?



**Dsida, Michael**

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**From:** Schneider, Christian  
**Sent:** Monday, January 23, 2006 11:17 AM  
**To:** Dsida, Michael  
**Subject:** SB 145  
**Attachments:** Wisconsin Deferred Bad Check Program[2].doc

Mike,

As currently drafted, SB 145 allows DAs to contract with nonprofit collection agencies to help them collect on bad checks. When the bill was originally drafted, we had one specific nonprofit company in mind to administer the program - it's a company in Minnesota that has been doing it there for a few years. The company keeps a database of offenders, teaches financial counseling classes, and does other things we wanted the deferred prosecution agreements to cover.

We were trying to find a way that we could open up the bill to both nonprofit and for-profit collection agencies. If we do so, we wanted the law to require some of the things the nonprofit company said they would do but aren't enumerated in the bill (MN law doesn't require the company to be nonprofit, it just so happens that this company is so good, they have gotten most of the business in their state).

Attached is a sample bill draft they put together that they believe shows what will have to be required by law if for profit companies are allowed to compete for these contracts. Can you take a look at it and see if any of these new requirements make any sense?

Thanks,

Chris

50485

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**From:** Scott Adkisson [mailto:scott@financialcrimes.net]  
**Sent:** Friday, January 06, 2006 10:23 AM  
**To:** Schneider, Christian  
**Subject:** RPA bill

Chris,  
Attached is the bill we developed at the beginning. I have highlighted areas that we can discuss.

Respectfully,  
Scott Adkisson

02/02/2006



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRBs0485/PT

MGD:ch

DN ste

gf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE SUBSTITUTE AMENDMENT ,

TO 2005 SENATE BILL 145

CPS:  
Fix  
request  
sheet pls

MD

FRI  
5PM

Assembly

Gen

1 AN ACT ...; relating to: deferred prosecution agreements for persons charged  
2 with issuing a worthless check or other order for payment.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 218.04 (1) (a) of the statutes is amended to read:

4 218.04 (1) (a) "Collection agency" means any person engaging in the business  
5 of collecting or receiving for payment for others of any account, bill or other  
6 indebtedness. It shall not include attorneys at law authorized to practice in this state  
7 and resident herein, banks, express companies, state savings banks, state savings  
8 and loan associations, insurers and their agents, trust companies, or district  
9 attorneys acting under s. 971.41, persons contracting with district attorneys under  
10 s. 971.41 (5), professional men's associations collecting accounts for its members on  
11 a nonprofit basis, where such members are required by law to have a license,

1 diploma, or permit to practice or follow their profession, real estate brokers, and real  
2 estate salespersons.

**History:** 1971 c. 125, 164, 239; 1973 c. 3; 1979 c. 102 s. 236 (4); 1979 c. 162 s. 38 (3); 1979 c. 341 s. 12 (2); 1983 a. 189; 1989 a. 336; 1991 a. 221, 269, 316; 1993 a. 112, 179; 1995 a. 27, 329; 1997 a. 27, 191, 237; 1999 a. 9, 32; 2003 a. 138.

3 **SECTION 2.** 943.24 (6) of the statutes is created to read:

4 943.24 (6) (a) If the department of justice, a district attorney, or a state or local  
5 law enforcement agency requests any of the following information under par. (b) from  
6 a financial institution, as defined in s. 705.01 (3), regarding a specific person, the  
7 financial institution shall provide the information within 10 days after receiving the  
8 request:

9 1. Documents relating to the opening and closing of the person's account.

10 2. Notices regarding any of the following that were issued within the six months  
11 immediately before the request and that relate to the person:

12 a. Checks written by the person when there were insufficient funds in his or  
13 her account.

14 b. Overdrafts.

15 c. The dishonor of any check drawn on the person's account.

16 3. Account statements sent to the person by the financial institution for the  
17 following:

18 a. The period during which any specific check covered by a notice under subd.  
19 2. was issued.

20 b. The period immediately before and immediately after the period specified  
21 in subd. 3. b.

22 4. The last known address and telephone number for the person's home and  
23 business.

1 (b) The department of justice, a district attorney, or a state or local law  
2 enforcement agency may request information under par. (a) only if the request is in  
3 writing and if it states that the requester is investigating whether the person  
4 specified violated this section or is prosecuting the person specified under this  
5 section.

6 (c) A financial institution may not impose a fee for providing information  
7 under this subsection.

8 **SECTION 3.** 943.245 (1m) (intro.) of the statutes is amended to read:

9 943.245 (1m) (intro.) Any Except as provided in sub. (9), any person who incurs  
10 pecuniary loss, including any holder in due course of a check or order, may bring a  
11 civil action against any adult or emancipated minor who:

History: 1985 a. 179; 1987 a. 398; 1989 a. 31; 1993 a. 71; 2003 a. 138.

12 **SECTION 4.** 943.245 (3m) of the statutes is amended to read:

13 943.245 (3m) Any recovery under this section shall be reduced by the amount  
14 recovered as restitution for the same act under ss. 800.093 and 973.20 and by any  
15 amount collected in connection with the act and paid to the plaintiff under a deferred  
16 prosecution agreement under s. 971.41.

17 **SECTION 5.** 943.245 (8) of the statutes is amended to read:

18 943.245 (8) Nothing in this section other than sub. (9) precludes a plaintiff from  
19 bringing the action under ch. 799 if the amount claimed is within the jurisdictional  
20 limits of s. 799.01 (1) (d).

History: 1985 a. 179; 1987 a. 398; 1989 a. 31; 1993 a. 71; 2003 a. 138.

21 **SECTION 6.** 943.245 (9) of the statutes is created to read:

22 943.245 (9) A person may not bring an action under this section after  
23 requesting that a criminal prosecution be deferred under s. 971.41 if the person

1 against whom the action would be brought has complied with the terms of the  
2 deferred prosecution agreement.

3 **SECTION 7.** 971.41 of the statutes is created to read:

4 **971.41 Deferred prosecution program; worthless checks. (1)**

5 DEFINITION. In this section, "offender" means a person charged with, or for whom  
6 probable cause exists to charge the person with, a violation of s. 943.24.

7 **(2) ESTABLISHMENT OF PROGRAM; ELIGIBILITY CRITERIA.** A district attorney may  
8 create within his or her office a worthless check deferred prosecution program for  
9 offenders who agree to participate in it as an alternative to prosecution. The district  
10 attorney may establish criteria for determining an offender's eligibility for the  
11 program. Among the factors that the program may use in determining eligibility are  
12 the following:

13 (a) The face value of any check or order that was involved in the offense.

14 (b) If applicable, the reason why the check or order was dishonored by a  
15 financial institution.

16 (c) Other evidence presented to the district attorney regarding the facts and  
17 circumstances of the offense.

18 (d) The offender's criminal history.

19 (e) Prior referrals of the offender to the program.

20 (f) Whether other charges under s. 943.24 are pending against the offender.

21 **(3) CONDITIONS OF PROGRAM.** A deferred prosecution agreement to which this  
22 section applies may require an offender to do any of the following:

23 (a) Pay money owed for the worthless check or other order issued in violation  
24 of s. 943.24 to the district attorney for remittance to the payee of the worthless check  
25 or order.

(b) Make other payments for restitution for the offense, including payments to reimburse any person for fees assessed by a financial institution in connection with the person attempting to present the worthless check or other order.

(c) Pay administrative fees assessed under sub<sup>(d)</sup>(7).

(b) Pay for and successfully complete a class or counseling regarding financial management.

(4) OFFENSES COVERED. The deferred prosecution agreement shall specify the offenses for which prosecution is being deferred and shall describe the checks involved in the transactions. The district attorney shall agree not to prosecute those offenses while the agreement remains in effect or afterward if the offender successfully completes the deferred prosecution program.

(5) PRIVATE CONTRACTOR OPERATION OF PROGRAM. (a) A district attorney who establishes a deferred prosecution program under this section may contract with a private entity to operate or administer all or part of the program. If a district attorney does so, the district attorney shall supervise, direct, and control the private entity's

*under the*  
work of

(b) A private entity acting under this subsection shall maintain insurance, financial accounting controls, and fund disbursement procedures as required by the district attorney. The district attorney shall audit the accounts of the private entity, but only after providing written notice.

(c) If an offender who is the subject of a deferred prosecution agreement under this section is represented by an attorney, a private entity acting under this subsection may communicate directly with the offender if any of the following apply:

1. The attorney has not informed the private entity of his or her representation in writing.

1           2. The attorney has authorized the communication.

2           3. The private entity has requested authorization for the communication from  
3 the attorney, but the attorney has failed to respond to that request within a  
4 reasonable period of time.

5           (d) A district attorney may cancel a contract entered into with a private entity  
6 under this subsection if any of the following occur:

7           1. The private entity or a principals of the private entity is convicted of any of  
8 the following:

9           a. A felony under any state or federal law.

10           b. A misdemeanor under any state or federal law if proof of the defendant's  
11 dishonesty is an essential element of the offense or if the offense relates to debt  
12 collection.

13           2. The private entity uses or threatens to use force or violence against an  
14 offender, a member of his or her family, or his or her property.

15           3. The private entity threatens the seizure, attachment, or sale of an offender's  
16 property without disclosing that prior court proceedings are required.

17           4. The private entity, with knowledge that the statement is false, makes or  
18 threatens to make a statement to a <sup>3rd</sup> party that adversely affects an offender's  
19 reputation for creditworthiness.

20           5. The private entity initiates or threatens to initiate communication with an  
21 offender's employer. This <sup>subdivision</sup> does not apply if the communication is authorized under  
22 a court order or federal law or if all of the following apply:

23           a. An offender's payment is 30 or more days past due.

1           b. The private entity has provided written notice to the offender at his or her  
2 last known address, at least 5 days beforehand, of its intent to communicate with the  
3 employer.

4           6. The private entity harasses an offender, including by doing any of the  
5 following:

6           a. Communicating with the offender or a member of his or her family at any  
7 unusual time or place or at a time or place that the private entity knows or has reason  
8 to know is inconvenient to the offender or the family member. In the absence of  
9 evidence to the contrary, the private entity shall be presumed to know that  
10 communicating with an offender or a member of his or her family at his or her  
11 residence before 8:00 a.m. or after 9:00 p.m. is inconvenient to the offender or the  
12 family member.

13           b. Publishing or threatening to publish the offender's name on a list of offenders  
14 who allegedly refuse to pay restitution. This subd. 6. b. does not apply if the district  
15 attorney authorizes the publication of the offender's name in such a manner.

16           c. Advertising or threatening to advertise the sale of financial information  
17 regarding the offender in order to coerce the offender to pay restitution.

18           d. Disclosing or threatening to disclose information concerning the alleged  
19 violation of s. 943.24 without disclosing or agreeing to disclose the fact that the  
20 offender disputes the allegations. This subd. 6. d. applies only if the private entity  
21 knows that the offender reasonably disputes the allegations.

22           e. Disclosing or threatening to disclose information relating to an offender's  
23 case to any person other than the victim, the district attorney, and or persons to  
24 whom the district attorney has properly authorized disclosure.



1 f. Causing a telephone to ring or engaging any person in telephone conversation  
2 repeatedly or continuously with intent to annoy, abuse, or harass any person at the  
3 number called.

4 g. Using profane, obscene, or abusive language in communicating with an  
5 offender, a member of his or her family, or others.

6 h. Engaging in any conduct which the district attorney finds was intended to  
7 cause and did cause mental or physical illness to the offender or a member of his or  
8 her family.

9 i. Attempting or threatening to enforce a claimed right or remedy with  
10 knowledge or reason to know that the claimed right or remedy does not exist.

11 j. Except as authorized by the district attorney, engaging in any form of  
12 communication that simulates legal or judicial process or that conveys the  
13 impression that the communication is being made, is authorized, or <sup>is</sup> ~~was~~ approved  
14 by a governmental agency or official or by an attorney when it is not.

15 k. Using any badge, uniform, or other thing to indicate that the person is a  
16 governmental employee or official, except as authorized by law or by the district  
17 attorney.

18 L. Conducting business under a particular name or implying that the business  
19 has a particular name if the use of the name has not been authorized by the district  
20 attorney.

21 m. Misrepresenting the amount of restitution alleged to be owed by an offender.

22 n. Except as authorized by the district attorney, representing that an existing  
23 restitution amount may be increased by the addition of attorney fees, investigation  
24 fees, or any other fees or charges when those fees or charges may not legally be added.

1           o. Except as authorized by the district attorney, representing that the private  
2           entity is an attorney or an agent for an attorney if the entity is not.

3           p. Recovering or attempting to recover any interest or other charge or fee in  
4           excess of the actual restitution or claim unless the interest or other charge or fee is  
5           expressly authorized under the contract with the district attorney.

6           q. Communicating or threatening to communicate directly with an offender  
7           who is represented by an attorney. This subd. 6. q. does not apply to communications  
8           permitted under par. (c).

9           r. Engaging in dishonorable, unethical, or unprofessional conduct of a  
10          character likely to deceive, defraud, or harm the public.

11          s. Communicating with an offender or a member of his or her family at a time  
12          of day or night, with such frequency, or in such a manner as to constitute harassment  
13          of the offender or his or her family member.

14          (6) CONFIDENTIALITY. Records relating to programs established under this  
15          section are not subject to inspection or copying under s. 19.35. A district attorney  
16          may disclose information relating to persons participating in the program only to a  
17          private entity operating or administering such a program, to another district  
18          attorney office, to a court, or to a law enforcement agency. A private entity operating  
19          or administering such a program may disclose information relating to such persons

20          only as provided under sub. (5) (d) 6. or to the district attorney or, with the district  
21          attorney's consent, to another district attorney office or to a law enforcement agency.

22          (7) FEES. Notwithstanding s. 978.06 (1), a district attorney or a private entity  
23          acting under sub. (5) may charge a defendant who is a party to a deferred prosecution  
24          agreement under this section a fee to cover his, her, or its costs under the agreement.  
25          The district attorney may require that the fee be paid directly to the district

1 attorney's office or to the private entity. The district attorney, or the district attorney  
2 and the private entity, may establish guidelines on when fees maybe waived for an  
3 offender due to hardship and may authorize extended payment plans of not more  
4 than <sup>6</sup>six months in length.

5 (END)

D- Note

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0485/P1dn

MGD:....ch

Date

kj

Chris:

1. There may be some overlap among several provisions within s. 971.41 (5) (d) 6., but in the interest of getting this to you more quickly, I did not try to address that.

X 2. Section s. 971.41<sup>a</sup> (5) (d) 6. o. suggests that, with a district attorney's approval, a person working for private entity may falsely claim that he or she is an attorney. Under certain circumstances, making that false claim may be illegal (even with the district attorney's authorization), since it may constitute the unauthorized practice of law.

3. I left largely intact the provisions relating to the private entity communicating directly with a person represented by an attorney. (As I mentioned in one of my emails, those provisions are probably preempted by the federal Fair Debt Collection Practices Act.) s(FDCPA). ~~Provisions relating to contact~~ communicating with an employer.

employer.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

The FDCPA  
= may also preempt certain

the private  
entity  
entity

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0485/1dn  
MGD:kjf:rs

March 3, 2006

Chris:

1. There may be some overlap among several provisions within s. 971.41 (5) (d) 6., but in the interest of getting this to you more quickly, I did not try to address that.
2. Section s. 971.41 (5) (d) 6. o. suggests that, with a district attorney's approval, a person working for a private entity may falsely claim that he or she is an attorney. Under certain circumstances, making that false claim may be illegal (even with the district attorney's authorization), since it may constitute the unauthorized practice of law.
3. I left largely intact the provisions relating to the private entity communicating directly with a person represented by an attorney. As I mentioned in one of my emails, those provisions are probably preempted by the federal Fair Debt Collection Practices Act (FDCPA). The FDCPA may also preempt certain provisions relating to the private entity communicating with an employer.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867